

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

UNITED STATES OF AMERICA §
 §
VS. § CRIMINAL NO. 1:17-CR-153
 §
JOSE RUBIO-VILLEGAS §

**MOTION TO SUPPRESS WIRETAP EVIDENCE AND ALL FRUITS OF THE
INTERCEPTION OF WIRE COMMUNICATIONS FROM JOSE RUBIO-
VILLEGAS' PHONE**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, Jose Rubio-Villegas (Rubio-Villegas), Defendant, by and through his attorney of record, and files this, his Motion to Suppress Wiretap Evidence, and in support thereof, would show the Court as follows:

I.

FACTS PERTINENT TO THIS MOTION

On May 14, 2014, a United States District Judge in the Galveston Division of the Southern District of Texas signed an Order granting the Government

authorization to intercept wire communications for cellular number 832-727-2669.

In the order, the Government failed to identify the Department of Justice official who approved the wiretap applications as required by 18 U.S.C. §2518(4)(d).

Rubio-Villegas has standing to bring this motion because his phone was wiretapped.

PROCEDURAL HISTORY

On August 18, 2018, Defendant Sidney Worrell filed a motion to suppress the wiretap for failure of the Order to identify the high-level Department of Justice Official who approved the wiretap applications as required by 18 U.S.C. §2518(4)(d). (Doc 172).

On November 2, 2018, United States Magistrate Judge Zack Hawthorn filed a Report and Recommendation Granting Defendant's Motion to Suppress. (Doc. 201). In the Report and Recommendation, Magistrate Judge Hawthorn, also concluded that the Electronic Communications Privacy Act of 1986 extended the protections of the Omnibus Crime Control and Safe Streets Act of 1968 to include electronic communications (text messages). (citing *United States v. Smith*, 978 F.2d 171, 175 (5th Cir. 1992) (Doc. 201, page 7).

On January 8, 2019, the Honorable Thad Heartfield filed an Order Adopting the Magistrate Judge's Report and Recommendation and Overruling the Government's Objections. (Doc. 220).

On January 18, 2019, the Government filed a Notice of Appeal contesting the granting of the motion to suppress. (Doc. 226).

On April 5, 2019, the USCA filed a motion dismissing the appeal pursuant to

Appellant's motion. (Doc. 276)

GROUND FOR MOTION

Pursuant to 18 U.S.C. §2518(4)(d) and 18 U.S.C. §2518(10)(a), the Fourth Amendment to the Constitution, Counsel for Rubio-Villegas moves this Honorable Court to suppress all the oral, wire, and electronic communications that were obtained by the Government pursuant to the Order that was signed on May 14, 2014, in the Southern District of Texas. This would be consistent with the Report and Recommendation filed by Magistrate Hawthorn in Doc. 201.

CONCLUSION

Defendant Rubio-Villegas respectfully request that the Court grant this Motion to Suppress.

Respectfully Submitted,

/s/ Reynaldo P. Morin
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CERTIFICATE OF SERVICE

I, certify that a true and correct copy of the foregoing Motion to Suppress was electronically filed on April 17, 2019 with the Clerk of the District Court using CM/ECF system, which such notification of such filing was sent to:

Christopher Rapp, Assistant United States Attorney, email:
christopher.t.rapp@usdoj.gov

And, I certify that I have mailed by the United States Postal Service the documents to the following non-CM/ECF participants: None

/s/ Reynaldo P. Morin
Reynaldo P. Morin